

Decision 06-04-016 April 13, 2006

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of San Diego Gas & Electric Company  
(U-902-E) for Adoption of an Advanced Metering  
Infrastructure Deployment Scenario and  
Associated Cost Recovery and Rate Design.

Application 05-03-015  
(Filed March 15, 2005)

**OPINION GRANTING INTERVENOR COMPENSATION  
TO UTILITY CONSUMERS' ACTION NETWORK  
FOR SUBSTANTIAL CONTRIBUTIONS TO DECISION 05-08-018**

This decision awards Utility Consumers' Action Network (UCAN)  
\$31,192.55 in compensation for its substantial contributions to Decision  
(D.) 05-08-018, a decrease of \$7,066.02 from the amount requested.

**1. Background**

On March 15, 2005, San Diego Gas & Electric Company (SDG&E) filed the instant application, seeking authorization to spend \$50.3 million for pre-deployment costs for its proposed Advanced Metering Infrastructure (AMI) Project. The application also requested approval of SDG&E's proposed deployment plan and associated cost recovery proposal, and estimated its expected full deployment costs at \$612 million. A supplement was filed March 30, 2005 reflecting SDG&E's expected revenue requirement.

D.05-08-018 adopts a settlement between SDG&E, UCAN, and the Commission's Division of Ratepayer Advocates (DRA)<sup>1</sup> of the first phase of Application (A.) 05-03-015, finding it to be reasonable in light of the whole record, consistent with law, and in the public interest. The settlement agreement establishes a pre-deployment funding level of \$3.4 million for the period of September 2005 through March 2006 as reasonable and establishes the manner by which the costs will be recovered. The settlement also establishes a bridge funding level of \$5.9 million for the period after March 2006 through the end of 2006 as reasonable and establishes the manner by which the costs will be recovered. The decision addresses the appropriate level of funding by SDG&E ratepayers of pre-deployment activities related to SDG&E's consideration of an investment in the AMI Project. The proceeding remains open to consider whether to authorize upfront ratepayer funding of SDG&E's deployment of its AMI Project.

## **2. Requirements for Awards of Compensation**

The intervenor compensation program, enacted in Pub. Util. Code §§ 1801-1812, requires California jurisdictional utilities to pay the reasonable costs of an intervenor's participation if the intervenor makes a substantial contribution to the Commission's proceedings. The statute provides that the utility may adjust its rates to collect the amount awarded from its ratepayers. (Subsequent statutory references are to the Public Utilities Code unless otherwise indicated.)

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<sup>1</sup> Formerly the Office of Ratepayer Advocates (ORA). Change effective January 1, 2006, pursuant to Senate Bill 608.

All of the following procedures and criteria must be satisfied for an intervenor to obtain a compensation award:

1. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent (NOI) to claim compensation within 30 days of the prehearing conference (PHC). (§ 1804(a).)
2. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)
3. The intervenor should file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (§ 1804(c).)
4. The intervenor must demonstrate “significant financial hardship.” (§§ 1802(g), 1804(b)(1).)
5. The intervenor’s presentation must have made a “substantial contribution” to the proceeding, through the adoption, in whole or in part, of the intervenor’s contention or recommendations by a Commission order or decision. (§§ 1802(i), 1803(a).)
6. The claimed fees and costs are reasonable (§1801), necessary for and related to the substantial contribution (D.98-04-059), comparable to the market rates paid to others with comparable training and experience (§1806), and productive (D.98-04-059).

For discussion here, the procedural issues in Items 1-4 above are combined, followed by separate discussions on Items 5-6.

### **3. Procedural Issues**

The PHC in this matter was held on June 16, 2005. UCAN filed its timely NOI on July 8, 2005. Section 1802(b)(1) defines a “customer as: A) a participant representing consumers, customers or subscribers of a utility; B) a representative who has been authorized by a customer; or C) a representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential or small business customers.” In this case,

UCAN is a customer as defined in paragraph C: it is an organization authorized by its articles of incorporation to represent the interests of consumers, a portion of which are residential customers. In its NOI, UCAN asserted financial hardship.

On July 20, 2005, Administrative Law Judge (ALJ) Cooke ruled that UCAN is a customer pursuant to § 1802(b)(1)(c), and found that UCAN meets the financial hardship condition, through a rebuttable presumption of eligibility, pursuant to § 1804(b)(1), by showing a finding to meet this requirement was made in another proceeding within one year of the commencement of this proceeding (ALJ Long Ruling dated June 28, 2005). UCAN filed its request for compensation on October 11, 2005, within 60 days of D.05-08-018 being issued.<sup>2</sup> In view of the above, we find that UCAN has satisfied all the procedural requirements necessary to make its request for compensation.

#### **4. Substantial Contribution**

In evaluating whether a customer made a substantial contribution to a proceeding we look at several things. First, did the ALJ or Commission adopt one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer? (See §1802(i).) Second, if the customer's contentions or recommendations paralleled those of another party, did the customer's participation materially supplement, complement, or contribute to the presentation of the other party or to the development of a fuller record that assisted the Commission in making its decision? (See §§1802(i) and

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<sup>2</sup> No party opposes the request.

1802.5.) As described in §1802(i), the assessment of whether the customer made a substantial contribution requires the exercise of judgment.

In assessing whether the customer meets this standard, the Commission typically reviews the record, composed in part of pleadings of the customer and, in litigated matters, the hearing transcripts, and compares it to the findings, conclusions, and orders in the decision to which the customer asserts it contributed. It is then a matter of judgment as to whether the customer's presentation substantially assisted the Commission.<sup>3</sup>

Should the Commission not adopt any of the customer's recommendations, compensation may be awarded if, in the judgment of the Commission, the customer's participation substantially contributed to the decision or order. For example, if a customer provided a unique perspective that enriched the Commission's deliberations and the record, the Commission could find that the customer made a substantial contribution. With this guidance in mind, we turn to the claimed contributions UCAN made to the proceeding.

UCAN describes its contributions as follows:

"UCAN effectively raised three issues in this application through the expert testimony of Jeffrey Nahigian. It argued:

1. The amount of funding sought by SDG&E was excessive and premature,
2. SDG&E was not coordinating its [Broadband over Powerline] BPL pilot program with the AMI pilots
3. SDG&E was not coordinating its meter development and procurement activities with other IOUs.

Of there (sic) three factual allegations, the settlement resolved and the Commission confirmed facts and remedies that

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<sup>3</sup> D.98-04-059, 79 CPUC2d, 628 at 653.

addressed all of the issues, thus satisfying the burden of Section 1802(h).” (UCAN Request, p. 2.)

Because the first phase of this case was settled, the final decision does not address UCAN’s testimony, or specify how that testimony might have influenced the settlement. However, based on a review of the testimony, it is clear that unique issues that UCAN raised were addressed and resolved in the settlement. Therefore, we find that UCAN made a substantial contribution to D.05-08-018.

After we have determined the scope of a customer’s substantial contribution, we then look at whether the compensation requested is reasonable.

## 5. Reasonableness of Requested Compensation

UCAN requests \$38,258.57 for its participation in this proceeding, as follows:

Advocate	Year	Rate	Hours	Total
Shames	2005	\$ 300	83.00	\$24,900.00
Marcus	2005	\$ 210	1.25	\$ 262.50
Schilberg	2005	\$ 165	3.59	\$ 592.35
Nahigian	2005	\$ 155	76.50	\$11,857.50
Subtotal				\$37,612.35
Expenses				\$ 646.22
Total				\$38,258.57

In general, the components of this request must constitute reasonable fees and costs of the customer’s preparation for and participation in a proceeding that resulted in a substantial contribution. The issues we consider to determine reasonableness are discussed below:

### 5.1 Hours and Costs Related to and Necessary for Substantial Contribution

We first assess whether the hours claimed for the customer’s efforts that resulted in substantial contributions to Commission decisions are reasonable by

determining to what degree the hours and costs are related to the work performed and necessary for the substantial contribution.

UCAN documented its claimed hours by presenting a daily breakdown of the hours of its attorney, Michael Shames, accompanied by a brief description of each activity. UCAN states that it did not claim time associated with activities related to the deployment phase of this proceeding. The hourly breakdown reasonably supports most of the claimed hours, but we deny 15.5 of the hours Shames claimed as premature, as detailed below. These hours appear to be related to efforts and activities in preparation for Phase 2, the deployment phase, rather than hours associated with Phase 1 testimony or settlement efforts. Therefore, we award compensation for only 67.5 of the hours claimed by Shames, or 81.33% of the hours claimed.

### **Shames' Hours Denied as Premature**

3/16/2005	Research BPL experts	2.0
3/18/2005	T/C w/Synapse re: consulting.	0.6
3/18/2005	T/C w/Yankee Group.	0.2
3/22/2005	T/C w/Yankee Group.	0.7
3/22/2005	T/C w/Synapse	5.0
3/22/2005	Send work plans.	0.2
3/23/2005	T/C w/Synapse re: proposal.	0.4
3/23/2005	Refine proposal	0.5
5/10/2005	T/C w/Synapse re: timeline for project	0.3
6/6/2005	T/C w/Synapse re: August testimony	0.5
6/13/2005	Review Synergy testimony outline and send memo re: changes.	1.8
6/29/2005	Review SDG&E response to DR1, 11 (surveys)	2.8
6/30/2005	Mtg. w/staff re: survey data.	0.5
Total		15.5

UCAN provided monthly invoices of the hours worked by its consultant, JBS Energy, Inc. (JBS). The JBS invoices provide only a total for the hours billed for the proceeding, but do not specify the time period for which the invoice applies or the tasks and work performed during that time period. Given this lack of specificity, it is difficult to evaluate whether the work performed

contributed to UCAN's substantial contribution, although the number of hours claimed appear generally reasonable based on the duration and scope of the proceeding and UCAN's work. However, given the two-phase nature of this proceeding, it is impossible to determine whether any of the billed time is associated with Phase 2 or has accurately been billed here. Given the lack of documentation, we will award only 81.33% of the hours requested for each of UCAN's consultants (consistent with the reduction associated with Shames' hours). If UCAN provides additional documentation for all of the hours claimed to support work related to Phase 1, we later will consider awarding compensation for the full amount of hours billed. UCAN is cautioned that in the future additional specificity of description of the services rendered is necessary for the hours claimed by its consultants, similar to the documentation it provided for attorney Shames. In summary, we will award compensation for 1.02 hours for Marcus, 2.92 for Schilberg, and 62.22 for Nahigian.

## **5.2 Market Rate Standard**

We next take into consideration whether the claimed fees and costs are comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services.

UCAN seeks an hourly rate of \$300 for work performed by Shames in 2005. We previously approved this rate for work performed by Shames in 2005 in D.06-01-034, and we find this rate reasonable here.

UCAN seeks to increase the hourly rate of JBS, Inc. consultants William Marcus, Gayatri Schilberg, and Jeffrey Nahigian, by \$15 each above previously authorized 2004 rates.

**Marcus:** UCAN requests a \$210 rate for Marcus for 2005 (7% increase). UCAN states this rate is the current normal billing rate by JBS for Marcus, and



notes that D.05-11-031 cites Marcus as an example of an intervenor representative who has “consistently requested small rate increases at rates below that of his peers,” and has been paid rates that are modest for an expert with more than 20 years’ experience in regulatory matters. The \$210/hour rate for Marcus for 2005 is clearly within the guidelines and principles established in D.05-11-031, and we adopt that rate here.

**Schilberg:** UCAN seeks a rate of \$165 per hour for Schilberg in this proceeding for work performed in 2005. Schilberg’s work in this proceeding was billed by JBS at a rate of \$165 per hour. As with Marcus’s rate, UCAN submits that D.05-11-031 permits this increase in the hourly rate for Schilberg as it is so far below that of her peers that an increase in her 2005 authorized rate is appropriate. In further support, UCAN points out that Schilberg is a Senior Economist with over 20 years’ experience, has advanced degrees in economics, has testified before commissions and a superior court, and has been a principal witness. UCAN argues that the \$165 hourly rate is approximately half that reported for other senior experts.

We agree. The requested rate of \$165 per hour is within the guidelines and principles established in D.05-11-031, is reasonable, and we adopt it here.

**Nahigian:** For 2005, UCAN seeks a rate of \$155 per hour for Nahigian, asserting that JBS increased his rate for 2005 to that level. As with Marcus’s rate, UCAN submits that D.05-11-031 permits this increase in the hourly rate for Nahigian as it is so far below that of his peers that an increase in his 2005 authorized rate is appropriate. In support, UCAN points out that Nahigian is a Senior Economist with nearly 20 years experience, has testified as an expert, and his analysis has served to provide the basis of much of the testimony of Marcus before this Commission in recent years. UCAN argues that the \$155 hourly rate

is below the \$235 mid-point of the range for intervenors and experts approved in D.05-11-031.<sup>4</sup>

We agree. The requested rate of \$155 per hour is within the guidelines and principles established in D.05-11-031, is reasonable, and we adopt it here.

### **5.3 Direct Expenses**

The itemized direct expenses submitted by UCAN include costs for travel, photocopying, postage, and telephone and total \$646.22. The cost breakdown included with the request shows the miscellaneous expenses to be commensurate with the work performed. We find these costs reasonable.

### **5.4 Productivity**

D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. The costs of a customer's participation should bear a reasonable relationship to the benefits realized through their participation. This showing assists us in determining the overall reasonableness of the request. UCAN did not attempt to quantify the monetary benefits of its participation although it discussed that it minimized duplication with other parties, its efforts reduced the scope of funding authorized in Phase 1, and it promoted efficient use of utility resources through the conditions adopted in the settlement. We find that UCAN's efforts were productive.

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<sup>4</sup> TURN calculates that mid-point at \$235:  $(360+110)/2$ . TURN uses \$360 as the approved rate for intervenor experts in 2005 (see discussion above regarding Marcus) and \$110 as the low-end of the range of 2005 hourly rates for intervenors, citing D.05-11-031, page 17.

## 6. Award

As set forth in the table below, we award UCAN \$31,192.55.

Advocate	Year	Rate	Hours	Total
Shames	2005	\$ 300	67.50	\$20,250.00
Marcus	2005	\$ 210	1.02	\$ 214.20
Schilberg	2005	\$ 165	2.92	\$ 481.80
Nahigian	2005	\$ 155	62.22	\$ 9,644.10
Subtotal				\$30,590.10
Expenses				\$ 646.22
Total				\$31,236.32

Consistent with previous Commission decisions, we order that interest be paid on the award amount (at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15) commencing on December 25, 2005, the 75th day after UCAN filed its compensation request, and continuing until full payment of the award is made. The award is to be paid by SDG&E as the regulated entity in this proceeding.

We remind all intervenors that Commission staff may audit their records related to this award and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. UCAN's records should identify specific issues for which it requested compensation, the actual time spent by each employee or consultant, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation was claimed.

## 7. Waiver of Comment Period

This is an intervenor compensation matter. Accordingly, as provided by Rule 77.7(f)(6) of our Rules of Practice and Procedure, we waive the otherwise applicable 30-day comment period for this decision.

## **8. Assignment of Proceeding**

Dian Grueneich is the Assigned Commissioner, and Michelle Cooke is the assigned ALJ in this proceeding.

## **Findings of Fact**

1. UCAN has satisfied all the procedural requirements necessary to claim compensation in the proceeding.
2. UCAN made a substantial contribution to D.05-08-018, as described herein.
3. UCAN requested hourly rates for attorneys and experts, and related expenses, that as adjusted herein, are reasonable when compared to the market rates for persons with similar training and experience.
4. The total of the reasonable compensation is \$31,192.55.
5. The appendix to this opinion summarizes today's award.

## **Conclusions of Law**

1. UCAN has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed compensation, as adjusted herein, incurred in making substantial contributions to D.05-08-018.
2. UCAN should be awarded \$31,192.55 for its contribution to D.05-08-018.
3. Per Rule 77.7(f)(6), the comment period for this compensation decision may be waived.
4. This order should be effective today so that UCAN may be compensated without further delay.

## **O R D E R**

**IT IS ORDERED** that:

1. Utility Consumers' Action Network (UCAN) is awarded \$31,192.55 as compensation for its substantial contributions to Decision 05-08-018.

2. Within 30 days of the effective date of this decision, San Diego Gas & Electric Company shall pay UCAN the total award. Payment of the award shall include interest at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, beginning December 25, 2005, the 75<sup>th</sup> day after the filing date of UCAN's request for compensation, and continuing until full payment is made.

3. The comment period for today's decision is waived.

This order is effective today.

Dated April 13, 2006, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
GEOFFREY F. BROWN  
DIAN M. GRUENEICH  
JOHN A. BOHN  
RACHELLE B. CHONG  
Commissioners

**APPENDIX A****Compensation Decision Summary Information**

<b>Compensation Decision:</b>	D0604016	<b>Modifies Decision? No</b>
<b>Contribution Decision(s):</b>	D0508018	
<b>Proceeding(s):</b>	A0503015	
<b>Author:</b>	ALJ Cooke	
<b>Payer(s):</b>	San Diego Gas & Electric Company	

**Intervenor Information**

<b>Intervenor</b>	<b>Claim Date</b>	<b>Amount Requested</b>	<b>Amount Awarded</b>	<b>Multiplier?</b>	<b>Reason Change/Disallowance</b>
Utility Consumers' Action Network	October 11, 2005	\$38,258.57	\$31,236.32	No	Failure to justify hourly rate, premature

**Advocate Information**

<b>First Name</b>	<b>Last Name</b>	<b>Type</b>	<b>Intervenor</b>	<b>Hourly Fee Requested</b>	<b>Year Hourly Fee Requested</b>	<b>Hourly Fee Adopted</b>
Michael	Shames	Attorney	Utility Consumers' Action Network	\$300	2005	\$300
William	Marcus	Economist	Utility Consumers' Action Network	\$210	2005	\$210
Gayatri	Schilberg	Economist	Utility Consumers' Action Network	\$165	2005	\$165
Jeffrey	Nahigian	Economist	Utility Consumers' Action Network	\$155	2005	\$155

**(END APPENDIX A)**